



Entered on Docket
August 12, 2011

A handwritten signature in dark ink, appearing to read "Linda B. Riegler", is written over a horizontal line.

Hon. Linda B. Riegler
United States Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

EQUIPMENT MANAGEMENT
TECHNOLOGY,

Debtor.

Case No.: BK-S-11-11816-LBR
Chapter 11

Date: August 11, 2011
Time: 10:30 a.m.

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND
AUTHORIZING THE SALE OF ASSETS OF DEBTOR OUTSIDE THE
ORDINARY COURSE OF BUSINESS; (B) AUTHORIZING THE SALE OF
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES; (C) AUTHORIZING THE ASSUMPTION AND SALE
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (D) GRANTING RELATED RELIEF**

Upon the motion (the "Sale Motion") [ECF No. 209] of Brian D. Shapiro, Esq. ("Seller" or the "Trustee"), as Chapter 11 trustee of Equipment Management Technology, Inc. ("EMT" or the "Debtor"), a Nevada corporation and the debtor in the above-captioned Chapter 11 case, for

the entry of an order pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) approving the Asset Purchase Agreement (the “Agreement”) between Electro Rent Corporation (“ERC” or the “Buyer”) and the Trustee, (ii) authorizing the Seller to sell substantially all of the Debtor’s assets free and clear of all Encumbrances;¹ (iii) authorizing the Trustee to assume, sell and assign certain executory contracts; and (iv) granting related relief; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Sale Motion, the remainder of the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in this case, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, its creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:²

A. The findings and conclusions set forth herein together with the findings made by the Court on the record at the sale hearing, constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over this matter and over the property of the Debtor, including the assets to be sold, transferred or conveyed pursuant to the Agreement, and its estate

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

² All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith.

1 pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §
2 157(b)(2). Venue of this chapter 11 case and the Sale Motion in this district is proper pursuant to
3 28 U.S.C. §§ 1408 and 1409.

4 C. The statutory predicates for the relief sought in the Sale Motion and the basis for
5 the approvals and authorizations herein are (i) sections 102, 105, 363, and 365 of the Bankruptcy
6 Code, and (ii) Bankruptcy Rules 2002, 6004, 6006 and 9014.

7 D. This Order constitutes a final and appealable order within the meaning of 28
8 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the
9 Federal Rules of Civil Procedure as made applicable by Rule 7054 of the Federal Rules of
10 Bankruptcy Procedure, the Court expressly finds that there is no just reason for delay in the
11 implementation of this Order, and expressly directs entry of judgment as set forth herein.

12 E. As evidenced by the affidavits of service filed with the Court, proper, timely,
13 adequate, and sufficient notice of the Sale Motion, the proposed assumption and assignment of
14 the Assumed Agreements, and the Sale Hearing have been provided in accordance with sections
15 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008
16 and 9014, the local rules of this Court.

17 F. A reasonable opportunity to object or be heard regarding the requested relief has
18 been afforded to all interested persons and entities.

19 G. The Trustee has demonstrated a sufficient basis and the existence of appropriate
20 circumstances for him to enter into the Agreement, sell the Purchased Assets and assume and
21 assign the Assumed Agreements under sections 363 and 365 of the Bankruptcy Code, and such
22 actions are appropriate exercises of the Trustee's business judgment and in the best interests of
23 the Debtor, its estate and its creditors.

24 H. The Trustee and his professionals have demonstrated by the testimony and other
25 evidence proffered or adduced at the Sale Hearing that the Trustee has engaged in thorough
26 marketing efforts with respect to the Purchased Assets.

27 I. The Buyer is not an "insider" or "affiliate" of the Debtor, as those terms are
28 defined in the Bankruptcy Code. The Buyer is a purchaser in good faith, as that term is used in

1 the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of sections
2 363(m) and (n) of the Bankruptcy Code with respect to all of the Purchased Assets. The
3 Agreement was negotiated and entered into in good faith, based upon arms-length bargaining,
4 and without collusion or fraud of any kind. Neither the Trustee nor the Buyer has engaged in any
5 conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause
6 the application of or implicate section 363(n) of the Bankruptcy Code to the Agreement or to the
7 consummation of the sale transaction and transfer of the Purchased Assets and Assumed
8 Agreements to Buyer. The Buyer is entitled to all the protections and immunities of section
9 363(m) of the Bankruptcy Code.

10 J. The Trustee has full corporate power and authority to execute the Agreement and
11 all other documents contemplated thereby, and the sale of the Purchased Assets has been duly
12 and validly authorized by all necessary corporate authority by the Debtor and/or the Trustee to
13 consummate the transactions contemplated by the Agreement. No consents or approvals, other
14 than as may be expressly provided for in the Agreement, are required by the Trustee to
15 consummate such transactions.

16 K. The Trustee has advanced sound business reasons for seeking to enter into the
17 Agreement and to sell and/or assume and sell and assign the Purchased Assets, as more fully set
18 forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise
19 of the Trustee's business judgment to sell the Purchased Assets and to consummate the
20 transactions contemplated by the Agreement.

21 L. The terms and conditions of the Agreement, including the consideration to be
22 realized by the Debtor's estate pursuant to the Agreement, are fair and reasonable, and the
23 transactions contemplated by the Agreement are in the best interests of the Debtor's estate.

24 M. The Purchased Assets are property of the Debtor's estate and title thereto is vested
25 in the Debtor's estate.

26 N. Except as otherwise provided in the Agreement, the Purchased Assets shall be
27 sold free and clear of all Encumbrances (excepting, for the avoidance of doubt, Permitted
28 Encumbrances) with such Encumbrances to attach to the Cash Consideration to be received by

1 the Trustee in the same priority and subject to the same defenses and avoidability, if any, as
2 before the Closing, and Buyer would not enter into the Agreement to purchase the Purchased
3 Assets otherwise.

4 O. The transfer of the Purchased Assets to Buyer will be a legal, valid and effective
5 transfer of the Purchased Assets, and, except as may otherwise be provided in the Agreement,
6 shall vest Buyer with all right, title and interest of the Debtor to the Purchased Assets free and
7 clear of any and all Encumbrances except for Permitted Encumbrances. Except as specifically
8 provided in the Agreement or this Order, the Buyer shall not assume or become liable for any
9 Encumbrances relating to the Purchased Assets.

10 P. The transfer of the Purchased Assets to the Buyer free and clear of all
11 Encumbrances (excepting, for the avoidance of doubt, Permitted Encumbrances) will not result
12 in any undue burden or prejudice to any holders of any Encumbrances as all such Encumbrances
13 of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Purchased
14 Assets received by the Debtor in the order of their priority, with the same validity, force and
15 effect that they now have as against the Purchased Assets and subject to any claims and defenses
16 the Debtor, the Trustee or other parties may possess with respect thereto. All persons having
17 Encumbrances (other than the Permitted Encumbrances) of any kind or nature whatsoever
18 against or in any of the Debtor or the Purchased Assets shall be forever barred estopped and
19 permanently enjoined from pursuing or asserting such Encumbrances against the Buyer, any of
20 its assets, property, successors or assigns, or the Purchased Assets.

21 Q. The Trustee may sell the Purchased Assets free and clear of all Encumbrances of
22 any kind or nature whatsoever because, in each case, one or more of the standards set forth in
23 section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Encumbrances and
24 (ii) non-debtor parties, who did not object, or who withdrew their objections, to the sale of the
25 Purchased Assets and the Sale Motion are deemed to have consented pursuant to section
26 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object fall within
27 one or more of the other subsections of section 363(f) of the Bankruptcy Code and are
28 adequately protected by having their Encumbrances, if any, attach to the proceeds of the sale of

1 the Purchased Assets ultimately attributable to the property against or in which they claim or
2 may claim any Encumbrances.

3 R. Not selling the Purchased Assets free and clear of all Encumbrances (except the
4 Permitted Encumbrances) would adversely impact the Debtor's estate, and the sale of the
5 Purchased Assets, other than one free and clear of all Encumbrances (except the Permitted
6 Encumbrances), would be of substantially less value to the Debtor's estate.

7 S. The Trustee and the Buyer have, to the extent necessary, satisfied the
8 requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), (B) and
9 365(f) of the Bankruptcy Code, in connection with the sale and the assumption and assignment
10 of the Assumed Agreements. The Buyer has demonstrated adequate assurance of future
11 performance with respect to each of the Assumed Agreements pursuant to section 365(b)(1)(C)
12 and 365(f)(2) of the Bankruptcy Code. The assumption and assignment of the Assumed
13 Agreements pursuant to the terms of this Order is integral to consummation of the Agreement
14 and is in the best interests of the Debtor, its estate, its creditors and other parties in interest, and
15 represents the exercise of sound and prudent business judgment by the Trustee.

16 T. The Assumed Agreements are assignable notwithstanding any provisions
17 contained therein to the contrary. Through the provisions of the Agreement, the Trustee has
18 provided for the cures and/or other payments or actions required to assume and assign the
19 Assumed Agreements to the Buyer. The Buyer has provided adequate assurance of its future
20 performance under the Assumed Agreements.

21 U. The Buyer will be acting in good faith, pursuant to section 363(m) of the
22 Bankruptcy Code, in closing the transactions contemplated by the Agreement at any time on or
23 after the entry of this Order and cause has been shown as to why this Order should not be subject
24 to the stay provided by Bankruptcy Rules 6004(g) and 6006(d).

25 V. The transactions contemplated under the Agreement do not amount to a
26 consolidation, merger or de facto merger of the Buyer and the Debtor and/or the Debtor's estate,
27 there is not substantial continuity between the Buyer and the Debtor, there is no continuity of
28 enterprise between the Debtor and the Buyer, the Buyer is not a mere continuation of the Debtor

1 or its estate, there is no common identity of incorporators, directors or stockholders between the
2 Debtor and Buyer, Buyer is not holding itself out to the public as a continuation of the Debtor
3 and the Buyer does not constitute a successor to the Debtor or its estate.

4 W. The sale of the Purchased Assets outside of a plan of reorganization pursuant to
5 the Agreement neither impermissibly restructures the rights of the Debtor's creditors nor
6 impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The sale
7 does not constitute a *sub rosa* plan of reorganization.

8 X. The total consideration provided by the Buyer for the Purchased Assets (a) is fair
9 and reasonable, and the Purchase Price (b) constitutes reasonably equivalent value under the
10 Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance
11 Act, (c) constitutes reasonably equivalent value, fair consideration and fair value under any other
12 applicable laws of the United States, any state, territory or possession, or the District of
13 Columbia, for the Purchased Assets and (d) will provide a greater recovery for the Debtor's
14 creditors and other interested parties than would be provided by any other practically available
15 alternative.

16 Y. The Buyer shall have no obligations with respect to any liabilities of the Debtor
17 other than the Assumed Liabilities.

18 Z. For purposes of section 363(b)(1) of the Bankruptcy Code, the Debtor has not, in
19 connection with offering a product or service, disclosed to any individual a policy prohibiting the
20 transfer of "personally identifiable information" (as defined in section 101(41A) of the
21 Bankruptcy Code) about individuals to persons that are not affiliated with the Debtor.

22 **NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS**
23 **HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

24 1. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, and based on the
25 foregoing findings of fact, the relief requested in the Sale Motion is granted and approved in its
26 entirety, subject to the terms and conditions contained herein.

27 2. All objections, responses, and requests for continuance concerning the Sale
28 Motion are resolved or overruled in accordance with the terms of this Order and as set forth in

1 the record of the Sale Hearing. To the extent any such objection, response or request for
2 continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights
3 contained therein, is overruled and denied.

4 3. Notice of the Sale Hearing, the Sale Motion, the Cure Amounts and all applicable
5 objection deadlines was fair and equitable under the circumstances and complied in all respects
6 with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

7 4. The sale of the Purchased Assets, the terms and conditions of the Agreement
8 (including all schedules and exhibits affixed thereto), and the transactions contemplated thereby
9 are authorized and approved in all respects.

10 5. The sale of the Purchased Assets and the consideration provided by the Buyer
11 under the Agreement is fair and reasonable and shall be deemed for all purposes to constitute a
12 transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and
13 any other applicable law.

14 6. The Buyer is hereby granted and is entitled to all of the protections provided to a
15 good faith purchaser under section 363(m) of the Bankruptcy Code, including with respect to the
16 transfer of the Assumed Agreements as part of the sale of the Purchased Assets pursuant to
17 section 365 of the Bankruptcy Code and this Order.

18 7. Subject to the terms of the Agreement, the Trustee will be, and hereby is,
19 authorized, to assume, perform under, consummate and implement the terms of the Agreement,
20 together with any and all additional instruments and documents that may be reasonably
21 necessary or desirable to implement and effectuate the terms of the Agreement, this Order and
22 sale of the Purchased Assets contemplated thereby including, without limitation, deeds,
23 assignments, stock powers and other instruments of transfer, and to take all further actions as
24 may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting,
25 conveying and conferring to the Buyer, or reducing to possession any or all of the Purchased
26 Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the
27 Trustee's obligations as contemplated by the Agreement, without any further corporate action or
28 orders of this Court. The Buyer shall have no obligation to proceed with the Closing of the

1 Agreement until all conditions precedent to its obligations to do so have been met, satisfied or
2 waived in accordance with the terms of the Agreement.

3 8. The Trustee and each other person or entity having duties or responsibilities under
4 the Agreement, any agreements related thereto or this Order, and their respective directors,
5 officers, employees, members, agents, representatives, and attorneys, are authorized and
6 empowered and directed, subject to the terms and conditions contained in the Agreement: (a) to
7 carry out all of the provisions of the Agreement and any related agreements; (b) to issue, execute,
8 deliver, file, and record, as appropriate, the documents evidencing and consummating the
9 Agreement, and any related agreements; (c) to take any and all actions contemplated by the
10 Agreement, any related agreements or this Order; and (d) to issue, execute, deliver, file, and
11 record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds,
12 bills of sale, assignments, leases, or other agreements or documents and to perform such other
13 acts and execute and deliver such other documents, as are consistent with, and reasonably
14 necessary or appropriate to implement, effectuate, and consummate, the Agreement, any related
15 agreements and this Order and the transactions contemplated thereby and hereby, all without
16 further application to, or order of, the Court or further action by their respective directors,
17 officers, employees, members, agents, representatives, and attorneys, and with like effect as if
18 such actions had been taken by unanimous action of the respective directors, officers, employees,
19 members, agents, representatives, and attorneys of such entities.

20 9. Effective as of the Closing, the sale of the Purchased Assets by the Trustee to the
21 Buyer shall constitute a legal, valid and effective transfer of the Purchased Assets
22 notwithstanding any requirement for approval or consent by any person and shall vest Buyer
23 with all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all
24 Encumbrances of any kind (except the Permitted Encumbrances), pursuant to section 363(f) of
25 the Bankruptcy Code.

26 10. The sale of the Purchased Assets is not subject to avoidance pursuant to section
27 363(n) of the Bankruptcy Code.

28 11. Except to the extent specifically provided in the Agreement, upon the closing, the

1 Trustee shall be, and hereby is, authorized, empowered and directed, pursuant to sections 105
2 and 363(b) of the Bankruptcy Code, to sell the Purchased Assets to the Buyer. The sale of the
3 Purchased Assets shall vest Buyer with all right, title and interest of the Debtor to the Purchased
4 Assets free and clear of any and all Encumbrances and other liabilities and claims, whether
5 secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or
6 unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated,
7 matured or unmatured, disputed or undisputed, or known or unknown, whether arising before or
8 subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or
9 otherwise, with all such Encumbrances to attach only to the proceeds of the sale with the same
10 priority, validity, force, and effect, if any, as they now have in or against the Purchased Assets,
11 subject to all claims and defenses of the Debtor or the Trustee with respect thereto. Following the
12 Closing Date, no holder of any Encumbrances in the Purchased Assets shall interfere with the
13 Buyer's use and enjoyment of the Purchased Assets based on or related to such Encumbrances,
14 or any actions that the Debtor may take in its chapter 11 case and no person shall take any action
15 to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in
16 or by the Agreement or this Order.

17 12. Upon payment of the Closing Date Payment to the Trustee in accordance with the
18 Agreement and such Closing Date Payment no longer being subject to challenge, the provisions
19 of this Order authorizing the sale of the Purchased Assets free and clear of Encumbrances, other
20 than Permitted Encumbrances, shall be self-executing, and neither the Trustee nor the Buyer
21 shall be required to execute or file releases, termination statements, assignments, consents, or
22 other instruments in order to effectuate, consummate and implement the provisions of this Order.

23 13. Upon the Closing Date, the Debtor's creditors are authorized and directed to
24 execute such documents and take all other actions as may be necessary to release any
25 Encumbrances of any kind against the Purchased Assets, as such Encumbrances may have been
26 recorded or may otherwise exist.

27 14. To the greatest extent available under applicable law, the Buyer shall be
28 authorized, as of the Closing Date, to operate under any license, permit, registration and

1 governmental authorization or approval of the Debtor with respect to the Purchased Assets, and
2 all such licenses, permits, registrations and governmental authorizations and approvals are
3 deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing
4 Date.

5 15. All of the Debtor's interests in the Purchased Assets to be acquired by the Buyer
6 under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing,
7 transferred to and vested in the Buyer. Upon the occurrence of the Closing, this Order shall be
8 considered and constitute for any and all purposes a full and complete general assignment,
9 conveyance and transfer of the Purchased Assets acquired by the Buyer under the Agreement
10 and/or a bill of sale or assignment transferring good and marketable, indefeasible title and
11 interest in the Purchased Assets to the Buyer.

12 16. To the extent permitted by applicable law, except as expressly provided in the
13 Agreement, the Buyer is not assuming nor shall it or any affiliate of Buyer be in any way liable
14 or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtor
15 in any way whatsoever relating to or arising from the Debtor's ownership or use of the Purchased
16 Assets before the consummation of the transactions contemplated by the Agreement, or any
17 liabilities calculable by reference to the Debtor or its operation of the Purchased Assets, or
18 relating to continuing or other conditions existing on or before consummation of the transactions
19 contemplated by the Agreement, which liabilities, debts, and obligations are hereby extinguished
20 insofar as they may give rise to liability, successor or otherwise, against Buyer or any affiliate of
21 the Buyer.

22 17. Except as otherwise expressly provided in the Agreement, all persons or entities
23 presently on or after the Closing Date in possession of some or all of the Purchased Assets are
24 directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date, or at
25 such time thereafter as the Buyer may request.

26 18. Subject to the terms of the Agreement, the assumption by the Trustee of the
27 Assumed Agreements and the sale and assignment of such agreements to the Buyer, as provided
28 for or contemplated by the Agreement, be, and hereby is, authorized and approved pursuant to

1 sections 363 and 365 of the Bankruptcy Code.

2 19. The Assumed Agreements shall be deemed valid and binding and in full force and
3 effect and assumed by the Debtor and sold and assigned to the Buyer at the Closing, pursuant to
4 sections 363 and 365 of the Bankruptcy Code, subject only to the assumption of payment and
5 payment of all Cure Amounts required to be paid to assume and assign the agreements to the
6 Buyer.

7 20. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy
8 Code, the Buyer shall be fully and irrevocably vested in all right, title and interest of each
9 Assumed Agreement. The Debtor shall reasonably cooperate with, and take all actions
10 reasonably requested by, the Buyer to effectuate the foregoing.

11 21. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as
12 otherwise provided in this Order, any non-Debtor party to an Assumed Agreement shall
13 promptly receive payment by the Debtor of the applicable Cure Amount.

14 22. All defaults or other obligations under the Assumed Agreements arising before
15 the Closing (without giving effect to any acceleration clauses or any default provisions of the
16 kind specified in section 365(b)(2)) of the Bankruptcy Code shall be deemed cured by payment
17 of the Cure Amounts.

18 23. Any provision in any Assumed Agreement that purports to declare a breach,
19 default or payment right as a result of an assignment or a change of control in respect of the
20 Debtor is unenforceable, and all Assumed Agreements shall remain in full force and effect,
21 subject only to payment of the appropriate Cure Amounts, if any. No sections or provisions of
22 any Assumed Agreement that purport to provide for additional payments, penalties, charges, or
23 other financial accommodations in favor of the non-debtor third party to the Assumed
24 Agreements shall have any force and effect with respect to the sale transaction and assignments
25 authorized by this Order, and such provisions constitute unenforceable anti-assignment
26 provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable
27 under section 365(e) of the Bankruptcy Code. No assignment of any Assumed Agreement
28 pursuant to the terms of the Agreement shall in any respect constitute a default under any

1 Assumed Agreement. The non-debtor party to each Assumed Agreement shall be deemed to
2 have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the
3 Buyer shall enjoy all of the rights and benefits under each such Assumed Agreement as of the
4 Closing Date without the necessity of obtaining such non-Debtor party's written consent to the
5 assumption or assignment thereof.

6 24. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all parties to
7 the Assumed Agreements are forever barred and enjoined from raising or asserting against Buyer
8 any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment,
9 arising under or related to the Assumed Agreement existing as of the Closing or arising by
10 reason of the closing, except for any liabilities first arising after the Closing and being assumed
11 by Buyer under the Agreement.

12 25. The Buyer has satisfied all requirements under sections 365(b)(1) and 365(b)(2)
13 of the Bankruptcy Code to provide adequate assurance of future performance under the Assumed
14 Agreements.

15 26. The Debtor and its estate shall be relieved of any liability for any breach of any of
16 the Assumed Agreements occurring from and after Closing, pursuant to and in accordance with
17 section 365(k) of the Bankruptcy Code.

18 27. Each and every federal, state, and local governmental agency or department is
19 hereby directed to accept any and all documents and instruments necessary and appropriate to
20 consummate the transactions contemplated by the Agreement and this Order.

21 28. To the extent prohibited by section 525 of the Bankruptcy Code, no governmental
22 unit may revoke or suspend any permit or license relating to the operation of the Purchased
23 Assets sold, transferred or conveyed to the Buyer on account of the filing or pendency of these
24 Chapter 11 cases or the consummation of the transaction provided for in the Agreement.

25 29. The Buyer has not assumed or is otherwise not obligated for any of the Debtor's
26 liabilities other than the Assumed Liabilities as set forth in the Agreement, and the Buyer has not
27 purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as
28 defined in sections 101(27) and 101(41)) of the Bankruptcy Code and all holders of

1 Encumbrances based upon or arising out of liabilities retained by the Debtor are hereby enjoined
2 from taking any action against the Buyer or the Purchased Assets to recover any Encumbrances
3 or on account of any liabilities of the Debtor other than the Assumed Liabilities pursuant to the
4 Agreement; provided, however, that such injunction shall not apply to FCC, LLC, d/b/a First
5 Capital Western Region, LLC until the Closing Date Payment has been paid to the Agent in
6 accordance with Section 3.2 of the Agreement and is not subject to challenge.

7 30. The Buyer is not a "successor" to the Debtor or its estate by reason of any theory
8 of law or equity, and the Buyer shall not assume, nor be deemed to assume, or in any way be
9 responsible for any liability or obligation of any of the Debtor and/or its estate including, but not
10 limited to, any bulk sales law, successor liability or similar liability except as otherwise expressly
11 provided in the Agreement. Except to the extent the Buyer assumes the Assumed Liabilities
12 pursuant to the Agreement, neither the purchase of the Purchased Assets by the Buyer or its
13 affiliates, nor the fact that the Buyer or its affiliates are using any of the Purchased Assets
14 previously operated by the Debtor, will cause the Buyer or any of its affiliates to be deemed a
15 successor in any respect to the Debtor's businesses within the meaning of any foreign, federal,
16 state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule
17 or regulation (including without limitation filing requirements under any such laws, rules or
18 regulations), or under any products liability law or doctrine with respect to the Debtor's liability
19 under such law, rule or regulation or doctrine, or under any product warranty liability law or
20 doctrine with respect to the Debtor's liability under such law, rule or regulation or doctrine.
21 Buyer and its affiliates shall have no liability or obligation under the WARN Act (29 U.S.C. §§
22 210 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act, or
23 any foreign, federal, state or local labor, employment, or environmental law by virtue of the
24 Buyer's purchase of the Purchased Assets or assumption of the Assumed Liabilities.

25 31. Pursuant to sections 105 and 363 of the Bankruptcy Code, all persons and entities,
26 including, but not limited to, the Trustee, the Debtor, all debt security holders, equity security
27 holders, the Debtor's employees or former employees, governmental, tax and regulatory
28 authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors

1 asserting or holding an Encumbrance of any kind or nature whatsoever against, in or with respect
2 to any of the Debtor or the Purchased Assets (whether legal or equitable, secured or unsecured,
3 matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or
4 out of, in connection with, or in any way relating to the Debtor, the Purchased Assets, the
5 operation of the Debtor's businesses before the Closing Date or the transfer of the Purchased
6 Assets to the Buyer, shall be forever barred, estopped, and permanently enjoined from asserting,
7 prosecuting or otherwise pursuing such Encumbrance against the Buyer or any affiliate,
8 successor or assign thereof and each of their respective current and former members, officers,
9 directors, managed funds, investment advisors, attorneys, employees, partners, affiliates and
10 representatives (each of the foregoing in its individual capacity), or the Purchased Assets.

11 32. Subject to the terms of the Agreement, the Agreement and any related agreements
12 may be waived, modified, amended, or supplemented by agreement of the Trustee and the Buyer,
13 subject further to the review and consent of FCC, LLC, d/b/a First Capital Western Region, LLC,
14 which consent shall not be unreasonably withheld, and without further action or order of the
15 Court; provided, however, that any such waiver, modification, amendment, or supplement is not
16 material and substantially conforms to, and effectuates, the Agreement and any related
17 agreements.

18 33. The failure to specifically include any particular provisions of the Agreement or
19 any related agreements in this Order shall not diminish or impair the effectiveness of such
20 provision, it being the intent of the Court, the Trustee and the Buyer that the Agreement and any
21 related agreements are authorized and approved in their entirety with such amendments thereto
22 as may be made by the parties in accordance with this Order prior to Closing.

23 34. No bulk sale law or any similar law of any state or other jurisdiction shall apply in
24 any way to the sale and the transactions contemplated by the Agreement.

25 35. To the extent any provisions of this Order conflict with the terms and conditions
26 of the Agreement, this Order shall govern and control.

27 36. Nothing in this Order shall alter or amend the Agreement and the obligations of
28 the Trustee and the Buyer thereunder.

1 37. This Order and Agreement shall be binding upon and govern the acts of all
2 Persons and entities, including without limitation, the Trustee, the Debtor and the Buyer, their
3 respective successors and permitted assigns, including, without limitation, any Chapter 11 trustee
4 hereinafter appointed for the Debtor's estate or any trustee appointed in a Chapter 7 case if this
5 case is converted from Chapter 11, all creditors of any Debtor (whether known or unknown),
6 filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other
7 persons and entities who may be required by operation of law, the duties of their office or
8 contract, to accept, file, register, or otherwise record or release any documents or instruments or
9 who may be required to report or insure any title in or to the Purchased Assets.

10 38. The provisions of this Order are non-severable and mutually dependent.

11 39. Notwithstanding Bankruptcy Rules 6004, 6006 and 7062, this Order shall be
12 effective and enforceable five (5) days from entry on the docket and its provisions shall be self-
13 executing. In the absence of any person or entity obtaining a stay pending appeal, the Trustee and
14 the Buyer are free to close under the Agreement at any time, subject to the terms of the
15 Agreement. In the absence of any person or entity obtaining a stay pending appeal, if the Debtor
16 and the Buyer close under the Agreement, the Buyer shall be deemed to be acting in "good faith"
17 and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects
18 of the transactions under and pursuant to the Agreement if this Order or any authorization
19 contained herein is reversed or modified on appeal.

20 40. This Court shall retain exclusive jurisdiction to enforce the terms and provisions
21 of this Order and the Agreement in all respects and to decide any disputes concerning this Order,
22 the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues
23 relating to the Agreement and this Order including, but not limited to, the interpretation of the
24 terms, conditions and provisions hereof and thereof, the status, nature and extent of the
25 Purchased Assets and any Assumed Agreements and all issues and disputes arising in connection
26 with the relief authorized herein, inclusive of those concerning the transfer of the Purchased
27 Assets free and clear of all Encumbrances (except for Permitted Encumbrances).

28 **IT IS SO ORDERED.**

PREPARED AND SUBMITTED:

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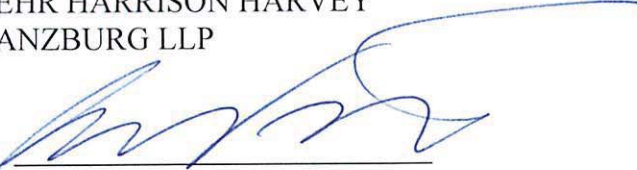
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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☒ The Court has waived the requirement set forth in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:
- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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